

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ronald A. Guzman	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	08 C 45	DATE	5/7/2008
CASE TITLE	Cato vs. Painter		

DOCKET ENTRY TEXT

For the reasons stated in this Minute Order, the Court grants defendant's motion to dismiss [doc. no. 7] and hereby terminates this case.

■ [For further details see text below.]

Docketing to mail notices.

STATEMENT

Plaintiff Lewis Cato has sued the United States of America for breach of contract and alleges that Perry Painter, an employee of the U.S. Postal Service acting within the scope of his employment, negligently misplaced or failed to deliver his personal property valued at \$3,600.00.

The complaint has numerous defects, such as naming the improper defendant in this Federal Tort Claims Act ("FTCA") cause of action, but the most important defect is the lack of jurisdiction in this case. Under the FTCA, no tort suit can be initiated against the United States until the plaintiff has presented a claim to the appropriate federal agency and that the agency has denied the claim or has failed to issue a final decision within six months of the date the claim was presented. 28 U.S.C. § 2675(a); 28 C.F.R. § 14.2(b)(1); *Kanar v. United States*, 118 F.3d 527, 528 (7th Cir. 1997).

In support of defendant's motion to dismiss, Gracia E. Carter, a Paralegal Specialist in the U.S. Postal Service Law Department's Chicago Field Office, provides a sworn declaration that she has reviewed the records maintained in the national registry and there is no record that Lewis Cato, or an authorized agent or legal representative of Lewis Cato, has presented to the Postal Service a claim for damage or other written notification of the allegations of the Postal Service mishandling his mail accompanied by a claim for money damages in a sum certain on behalf of Lewis Cato. (Mot. Dismiss, Ex. 1, Carter Declaration ¶¶ 1-3.) Plaintiff has been provided an opportunity to rebut the facts as stated in Ms. Carter's declaration but chose not to respond in any way.

Accordingly, there being no dispute regarding the facts showing that this Court lacks jurisdiction, the Court grants defendant's motion to dismiss the entire cause of action. This case is hereby terminated

Courtroom Deputy
Initials:

LC/LG

